

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7032

Joint Petition of Vermont Electric Power                     )  
Company, Inc., Green Mountain Power                     )  
Corporation and the Town of Stowe Electric                     )  
Department for a certificate of public good,                     )  
pursuant to 30 V.S.A. Section 248, authorizing the                     )  
so-called Lamoille County 115 kV Project,                     )  
consisting of the construction of a transmission line                     )  
from Stowe to Duxbury, Vermont, and                     )  
accompanying facilities                     )

Order entered: 2/2/2005

**PROCEDURAL ORDER RE SCHEDULE AND**  
**MOTIONS TO INTERVENE**

**Motions to Intervene**

Motions to intervene were filed in this Docket by the City of Burlington Electric Department ("BED") on January 13, 2005, and Bill Orr on January 19, 2005. BED contends that the construction of the new 115 kV line will "negatively impact the reliability of the transmission system serving Northwest Vermont" and thus "adversely affect BED's substantial interest in continuing to provide reliable electric service to its customers." Mr. Orr contends that the proposed Project will cause significant adverse impact on property values, both his own property, and, that of other property owners. In addition, Mr. Orr stated that he has developed an alternative route for the proposed 115 kV line.

On January 20, 2005, the Vermont Department of Public Service ("Department") and Vermont Electric Power Company, Inc. ("VELCO") filed letters stating that they have no objections to BED's intervention request. BED's motion to intervene is hereby granted.

VELCO's January 20 letter argued that Mr. Orr had not demonstrated a particular interest with respect to the issue of property values, but that they would waive any objection to Mr. Orr participating subject to the following conditions:

(1) Mr. Orr demonstrate more particularly how his intervention will address the statutory criteria; (2) that he join with other landowners who may seek to intervene with similar interests, with respect to appearance by counsel, presentation of evidence and discovery, and any other matters that the Board may deem appropriate for effective management of the docket; and (3) the scope of his intervention be limited to issues related to the general public good under the Section 248 criteria (which do not include impacts on individual property values).

VELCO cites the Vermont Supreme Court's holding in *Vermont Electric Power Company, Inc. v. Bandel*, 135 Vt. 141 (1977), for the principle that "proceedings under 30 V.S.A. § 248 relate only to the issue of public good, not the interests of private landowners who are or may be involved." Accordingly, VELCO argues that Mr. Orr should not be allowed to participate on the issue of the impact of the proposed Project on property values but could be allowed to participate on the issue of an alternative route, subject to certain conditions.

On January 26, 2005, the Department filed a letter stating that it does not object to Mr. Orr's intervention request. However, the Department recommends that any order granting intervention make clear that, pursuant to Board Rule 2.209(C), the Board may impose conditions on participation.

Board Rule 2.209(C) states:

Where a party has been granted intervention, the Board may restrict such party's participation to only those issues in which the party has demonstrated an interest, may require such party to join with other parties with respect to appearance by counsel, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.

Mr. Orr is hereby granted permissive intervention, pursuant to Board Rule 2.209(B), on the issue of an alternative route. However, as VELCO has correctly stated, the issue of the impact of the proposed Project on individual property values does not fall within the criteria of Section 248. Mr. Orr has failed to identify an individual interest in an issue relevant to the Section 248 criteria and, consequently, may not participate in these proceedings on this issue.

At this time, I am not imposing any conditions pursuant to Board Rule 2.209(C) on BED or Mr. Orr. However, this may become necessary if a significant number of landowners or organizations request party status. The issue of conditions pursuant to Board Rule 2.209(C) may be addressed at a later date.

Pursuant to the prehearing conference memorandum in this Docket, towns and local and regional planning commissions were required to file notices of appearance but were not required to file a formal motion to intervene.<sup>1</sup> If any party objected to one of these entities, that party could file an objection within seven days of the date that the entity filed a notice of appearance with the Board. At this time, the Central Vermont Regional Planning Commission, the Lamoille County Planning Commission, and the Town of Stowe have filed notices of appearance and no party has objected. These organizations are therefore granted party status.

Several other intervention requests and notices of appearance have been received by the Board, but the seven-day comment period has not yet elapsed. Therefore these requests will be dealt with in a subsequent procedural order.

### **Schedule**

The prehearing conference memorandum established a deadline of January 31, 2005, for proposed schedules; the deadline has passed and the only proposed schedules received have been from the Department and Petitioners. I hereby establish the following schedule for the remainder of this Docket:

Public Hearing	February 9, 2005
Deadline for Intervention Requests	February 18, 2005
Site Visit	Week of March 7, 2005
Last date for filing Discovery Requests on Petitioners	March 18, 2005

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1. The prehearing conference memorandum did not mention other entities that are required to notice under Section 248, but not automatically granted party status pursuant to the statute. On January 31, 2005, the Vermont Division of Historic Preservation ("DHP") filed a notice of appearance. The process for intervention by the DHP, and any other entity entitled to notice pursuant to Section 248(a)(4)(C), shall be the same as the process to be followed for towns and local and regional planning commissions. Parties shall have seven days to object to DHP's intervention. If no objection is filed, DHP shall be granted party status.

Last date for Petitioners' discovery responses	March 28, 2005
All parties other than Petitioners prefile direct testimony and exhibits	April 11, 2005
Last day to serve discovery on April 11 prefiled testimony and exhibits	May 2, 2005
Last day for discovery responses	May 12, 2005
All parties prefile rebuttal testimony and exhibits	May 23, 2005
Last day to serve discovery on rebuttal prefiled testimony and exhibits	June 3, 2005
Last day for responses to rebuttal discovery	June 13, 2005
All parties prefile surrebuttal testimony and exhibits	June 27, 2005
Technical hearings	Week of July 5, 2005
Briefs due	July 25, 2005
Reply Briefs due	August 8, 2005
Target Date for Proposal for Decision	September 6, 2005
Responses to Proposal for Decision and requests for Oral Argument	September 20, 2005

Parties shall conduct rolling discovery with a ten-day response time. Prefiled rebuttal testimony must be narrowly focused to address evidence in the record, and should be limited to responding to new matters which could not have been reasonably responded to in direct prefiled testimony. A similar standard shall apply for prefiled surrebuttal testimony.

Parties are requested to provide to the Board and other parties all prefiled testimony, exhibits, and discovery requests and responses in an electronic format, to the extent feasible, in addition to filing a hard copy.<sup>2</sup> Parties should note that, for this Docket, it will not be necessary to file an original and six copies of all filings with the Board, as required by Board rules. Parties need file only an original and three copies of each filing with the Board. For discovery requests and responses, parties should file only one copy with the Board.

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2. Please note that the filing deadline refers to the date that the filing must be received, in hard copy format, by the Board.

**Briefing Schedule for Issues Related to the State Forest**

At the prehearing conference I raised the question of whether a briefing schedule should be established to address the issue of whether the Board can authorize the condemnation of State land, and thereby possibly require an alternate route through the State Forest. The Department, ANR, and VELCO filed comments recommending that a separate briefing schedule not be established at this time. The three parties argue that it would be inefficient to brief this issue at this time as no party has proposed a route through the State Forest. Additionally, if the issue does arise, it may be addressed at the conclusion of the technical hearings, when all parties will have the opportunity to file briefs. Finally, the Department argues that a schedule for briefing this issue should be established only after all parties are known, which, under this schedule, will not be until March. The arguments put forth by these parties are sound, and consequently, the issue of whether the Board could authorize the condemnation of State land will be deferred at this time.

SO ORDERED.

Dated at Montpelier, Vermont, this 2<sup>nd</sup> day of February, 2005.

s/Ed McNamara

Edward M. McNamara, Esq.  
Hearing Officer

OFFICE OF THE CLERK

FILED: February 2, 2005

ATTEST: s/Susan M. Hudson

Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*